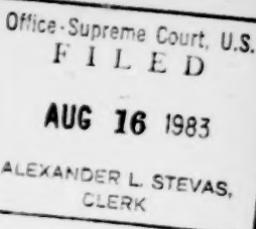


83 - 263



No.

SUPREME COURT OF THE UNITED STATES

October Term, 1983

RE: IN THE MATTER OF NORMAN E. FOGLE,
PETITIONER

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

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August 10, 1983

QUESTIONS PRESENTED

I.

Whether disability of an attorney to continue to perform his or her duties as a state prosecutor because of the physical and psychological pressures of that office is per se sufficient to justify suspension of the attorney's license to practice law.

II.

Whether suspension of an attorney's license to practice law solely because the attorney is disabled from performing the duties of a state prosecutor denies to that attorney the equal protection of the law or due process of law.

III.

Whether suspension of an attorney's license to practice law solely because he or she is disabled from acting as a state prosecutor denies to the attorney due process of law when such attorney is denied the notice and hearing provided by

the state for all other attorneys as a prerequisite to license suspension or cancellation.

IV.

Whether the disability of an attorney to function efficiently as a state prosecuting attorney is so closely related to the ability to engage in the private practice of law that it can reasonably constitute the sole ground for suspension of the license to practice law.

V.

Whether it is a denial of equal protection of the law for a state to suspend a state prosecutor's license to practice law for the sole reason that he is disabled from performing the duties of a prosecutor when such suspension action was not taken with respect to the only other person previously retired under the same retirement system for reasons of disability, viz. a State judge.

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The petitioner Norman E. Fogle respectfully prays that a Writ of Certiorari issue to review the order of the Supreme Court of South Carolina entered in this proceeding on May 19, 1983.

OPINION BELOW

In the matter of Norman E. Fogle, respondent, ____ S.C. ____, 303 S.E.2d 90.

JURISDICTION

The order of the Supreme Court of South Carolina was entered on May 5, 1983. A timely petition for rehearing was denied on May 19, 1983 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution which provides in part as follows: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The petitioner was a state prosecuting attorney (Solicitor) for the First Judicial Circuit of South Carolina from January, 1973, until his retirement for reasons of disability on April 7, 1983. He was admitted to the Bar of the State of South Carolina in 1962, and is admitted to practice in the District Court of South Carolina, the Fourth Circuit Court of Appeals, and is a member of this Court.

Solicitors and judges in South Carolina are members of the Retirement System for Judges and Solicitors, Section

9-8-10 et sequentia, Code of Laws of South Carolina 1976, which provides in part:

Section 9-8-60. (3) No member shall be permitted to retire and resign on account of being totally and permanently disabled and to receive the retirement benefit herein provided for until it is proven to the satisfaction of the Supreme Court, or a majority of the justices thereof, that the member is totally and permanently disabled, physically or mentally, or both, from further rendering useful and efficient service in the position. (Emphasis added).

In May, 1982, the petitioner applied to the Supreme Court of South Carolina for retirement on grounds of total and permanent disability to continue further useful and efficient service as a Solicitor. Solicitors in South Carolina are required to supervise the criminal dockets in the counties of their circuits and to be in attendance upon all criminal courts in such counties above the police court level.

In support of such application, the petitioner submitted to the Court medical evidence that he was suffering from urological problems and depression, the latter arising out of stress from his duties as a solicitor. An evaluation done by the Medical University of South Carolina upon order of the State Supreme Court reported similar findings. There was nothing in any report before the Court, medical or other, to indicate incompetence as an attorney, mental illness or inability to reason soundly.

Based on such reports, the Supreme Court of South Carolina on April 7, 1983, granted the petitioner's application for disability retirement on the ground that "Solicitor Norman E. Fogle is totally and permanently disabled from further rendering useful and efficient service in his position as Solicitor". Appendix 12.

On the same day, the Court issued an order and a rule to show cause temporarily

suspending the petitioner's license to practice law and requiring that he show cause why his license should not be suspended indefinitely. Appendix 14.

After hearing on the Rule, and without considering additional evidence, the Court issued its order suspending indefinitely the petitioner's license to practice law. Appendix 19. Timely petition for rehearing was denied. Appendix 23.

REASON FOR GRANTING THE WRIT

I.

THE DECISION BELOW RAISES
SERIOUS QUESTIONS FOR
FEDERAL AND STATE
PROSECUTORS THROUGHOUT THE
NATION WITH RESPECT TO THEIR
SUBSTANTIAL PROPERTY RIGHTS
IN THE EVENT OF THEIR
RETIREMENT ON DISABILITY.

The action by the State court in suspending the petitioner's license to practice law solely on the ground that he was disabled from continuing as one of the State's sixteen prosecuting attorneys is a significant precedent that could influence other states to follow suit. The possible consequences of the decision are serious because they involve a substantial property right of a potentially great number of persons throughout the United

States.

The Federal Government and most states provide for retirement of federal and state prosecuting attorneys for reasons of disability after varying minimum periods of service. The question of whether or not such retirement will per se constitute a valid ground for the cancellation or suspension by a state of the retiree's license to practice law is one with which such retirees and the supreme courts or other licensing authorities of the states will be faced with increasing frequency.

II.

THE DECISION BELOW RAISES
QUESTIONS FOR THE FEDERAL
COURTS WITH RESPECT TO THEIR
EXERCISE OF COMITY IN
ADMITTING OR CONTINUING THE
ADMISSION OF PROSECUTING
ATTORNEYS RETIRED FOR
REASONS OF DISABILITY.

If, as can be inferred from the decision below, an attorney is no longer capable of engaging in the private practice of law solely because he or she is disabled from carrying out efficiently the duties of a public prosecutor, the Federal Courts at all levels are faced with the question of whether such courts in their exercise of comity should admit such persons to practice in those courts or should continue the privilege of those already admitted. Without guidance from this Court, a myriad of conflicting decisions reasonably can be expected.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and order of the Supreme Court of South Carolina indefinitely suspending

the license of the petitioner to practice law.

Respectfully submitted,

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Petitioner
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Columbia, SC 29201

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August 10, 1983

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THE SUPREME COURT OF SOUTH CAROLINA

RE: The Honorable Norman E. Fogle,
Solicitor, First Judicial
Circuit

O R D E R

Pursuant to South Carolina Code § 9-8-10, et seq. (1976), the application for disability retirement of Solicitor Norman E. Fogle has been forwarded to the Court for consideration.

After a hearing and a review of the medical reports submitted, it is the opinion of the Court that Solicitor Norman E. Fogle is totally and permanently disabled from further rendering useful and efficient service in his position as Solicitor.

Let a copy of this Order, certified by the Clerk of Court, be served upon the Director of the Retirement System for Judges and Solicitors of the State of South Carolina.

s/ J. Woodrow Lewis C.J.
s/ Bruce Littlejohn A.J.
s/ J. B. Ness A.J.
s/ George T. Gregory, Jr. A.J.
s/ David W. Harwell A.J.

Columbia, South Carolina

April 7, 1983

CERTIFIED TRUE COPY
/s/ Frances H. Smith
Clerk, S.C. Supreme Court

THE SUPREME COURT OF SOUTH CAROLINA

RE: The Honorable Norman E. Fogle,
Solicitor, First Judicial
Circuit

ORDER AND RULE TO SHOW CAUSE

Pursuant to the attached Order of this Court, dated this day, finding you totally and permanently disabled from further rendering useful and efficient service in your position as Solicitor for the First Judicial Circuit, you are hereby required to show cause before this Court in the Supreme Court, 1231 Gervais Street, Columbia, South Carolina on May 2, 1983, at 2:30 p.m., or as soon thereafter as this matter can be heard, why you should not be indefinitely suspended from the practice of law in this State.

Further, you are hereby temporarily suspended from the practice of law pending the above referenced hearing.

Let a copy of this Order, certified by
the Clerk of this Court, be forthwith
served on Norman E. Fogle, Solicitor,
First Judicial Circuit.

s/ J. Woodrow Lewis C.J.
FOR THE COURT

Columbia, South Carolina

April 7, 1983.

CERTIFIED TRUE COPY
/s/ Frances H. Smith
Clerk, S. C. Supreme Court

THE SUPREME COURT OF SOUTH CAROLINA

RE: Norman E. Fogle, Solicitor,
First Judicial Circuit,
Retired,
Respondent.

RETURN

The Respondent would show to the Court
that:

1. Although he is totally and permanently disabled from rendering further useful and efficient service in his former position as solicitor, he is not disabled from the efficient private practice of law.
2. The Respondent is physically and mentally capable of exercising the professional judgement and discretion as a practicing attorney necessary for the protection of others or their property or interest in property.
3. The indefinite suspension of the Respondent's right to practice law based

upon a finding that the Respondent is disabled from rendering useful and efficient service as a solicitor would deny to him the equal protection of the laws guaranteed by the constitutions of the United States and the State.

4. The indefinite suspension of the Respondent's right to practice law based upon the finding set forth in paragraph (3.) would deny to him due process of law in that he would have been denied the rights afforded to others pursuant to the disciplinary procedure set forth in the Disciplinary Procedure Rule of this Court.

Wherefore, the Respondent prays that this Court reinstate his right to practice law, or, in the event the Court does not afford to him such relief, that he be afforded an opportunity through the Court's Rule on Disciplinary Procedure to establish that he is physically and

mentally capable of rendering efficient service to the public as a private practitioner.

Respectfully Submitted,

s/ Joseph C. Coleman

Joseph C. Coleman
1338 Main Street
1010 Barringer Bldg.
Columbia, S. C. 29201

Attorney for Respondent.

Columbia, S.C.

May 2, 1983.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RE: IN THE MATTER OF NORMAN E. FOGLE,
RESPONDENT.

ORDER

Solicitor Norman L. Fogle sought retirement pursuant to South Carolina Code § 8-8-10, et seq. (1976). Based upon medical reports submitted thereunder, this Court by Order dated April 7, 1983, found him totally and permanently disabled from rendering useful and efficient service in his position as Solicitor.

Under the facts presented, that conclusion dictates that this Court indefinitely suspend Norman E. Fogle from the practice of law. He shall forthwith deliver to the Clerk of the Supreme Court, within five days, his certificate admitting him to practice law in this State.

And it is so ordered.

s/ J. Woodrow Lewis C.J.
s/ Bruce Littlejohn A.J.
s/ J. B. Ness A.J.
s/ George T. Gregory, Jr. A.J.
s/ David W. Harwell A.J.

Columbia, South Carolina

May 5, 1983

CERTIFIED TRUE COPY
/s/ Reba D. Mims
Deputy Clerk, S. C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RE: IN THE MATTER OF NORMAN E. FOGLE,
RESPONDENT.

PETITION FOR REHEARING

The Respondent respectfully petitions
the Court for a rehearing of this matter
upon the following grounds:

If the Court has the inherent power to
suspend the Respondent's license to
practice law in toto, it also has the
inherent power to take less restrictive
action with respect to the license, i. e.,
to limit the Respondent in his practice of
law.

And limiting the Respondent's right to
practice law in a fashion commensurate
with the findings of the Court with
respect to physical and emotional
disability would be more appropriate than
the total suspension of his license.

s/ Joseph C. Coleman
Joseph C. Coleman
1338 Main Street
Columbia, S. C. 29201

Attorney for the Respondent
Columbia, S. C.

May 9, 1983

THE SUPREME COURT OF SOUTH CAROLINA
RE: In the Matter of Norman E. Fogle

ORDER

Norman E. Fogle seeks a rehearing from the Order of this Court dated May 4, 1983, indefinitely suspending him from the practice of law.

He sought retirement from his position as Solicitor based on certain physical, mental and emotional problems which the Court deemed sufficient to warrant retirement and to prevent him from properly performing the office of an attorney. On that basis his retirement was approved and his license to practice law indefinitely suspended.

The petition for rehearing is denied.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ George T. Gregory, Jr. A.J.

s/ David W. Harwell A.J.

Columbia, South Carolina

May 19, 1963